

# **<sup>1</sup>MIGRATION - A GLOBAL CONCERN**

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## **ABSTRACT**

*This paper deals with (some of the) ethical implications of current EU migration-management. It discusses the impact of prevailing migration-regimes on individual immigrants' fundamental human rights as well as on the rights' and interests of other states. The case is made that affluent nations are morally responsible for (1) existing global inequality that contribute to migration, (2) protection of individual migrants' fundamental human rights and (3) equitable burden-sharing regarding causes for- and effects of migration. It is argued that migration is a global rather than national concern and that, contrary to common reasoning, nation states cannot be ethically justified in designing their immigration regimes as they see fit.*

## **1. DISCUSSION**

Shortly after World War II, refugee rights were developed (the 1951 Refugee Convention) with the ambition to offer protection to individuals fleeing war and persecution. Today however, in the Western world, irregular migration is increasingly framed as a security problem (Huysmans, 2006) and a criminal offense (Bigo, 2003, Aas Franko, 2007, Pinyol-Jiménez, 2012).

Facing a steady flow of migrants, the European Union strengthens its' land- and maritime borders by physical as well as electronic barriers (Dijstelbloem, 2009). Large-scale border-control agencies have emerged such as the pan-European border surveillance system - EUROSUR - concerting (border) protection strategies operated by FRONTEX<sup>2</sup>. The EUROSUR system is designed to improve the "monitoring, detection, identification, tracking, prevention and interception of illegal border crossings". Key-aims of this agency are to: (1) combat cross-border crime such as drug- and human trafficking, (2) reduce the number of undocumented migrants entering the region undetected and (3) minimize the number of casualties among migrants trying to enter Europe in an irregular fashion. In order to obtain these goals, sophisticated surveillance regimes have been employed to police external and internal borders (Broeders and Engbersen, 2007, Dijstelbloem and Meijer, 2011). Automated authentication systems (Palm, 2011) and networking of large-scale databases containing watch lists, biometric samples and traveller data (SIS, EURODAC, VISA) (Broeders, 2007) make up non-transparent barriers restricting migrants' entrance to Schengen territory – "the border is everywhere" (Lyon, 2005). To further illustrate the securitization of migration process, recently, an international satellite system – "Sea Horse" - has been implemented to trace and track migrant vessels along the West African Coast and at the Mediterranean Sea in order to curtail irregular migration (Ceriani Cernadas, 2009). In tandem

<sup>1</sup> The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. <http://www.frontex.europa.eu/eurosur>

<sup>2</sup> These rights are also emphasized in codes central to migrants and border protection security (Schengen Borders Code and Handbook, the 2010 EU Action Plan Implementing the Stockholm Program and the 2008 Updated Schengen Catalogue on External Borders Control, Return and Readmission). Likewise, prohibition on torture and cruel, inhuman and degrading treatment is found in the Schengen Handbook, and in all EU legal documents on human rights treaties and conventions

with reinforced border-control mechanisms, an externalization of the migration control has been initiated by the European Union. Extraterritorial asylum processes have been initiated and readmission agreements established with African countries. Under such initiatives, Regional Protection Programs involving third countries in the processing of asylum applications have been launched. Such programs suggest that asylum seekers should file their applications in so called Regional Protection Areas (RPAs) outside the EU before proceeding to Europe (Noll, 2003, Peral, 2005, Gammeltoft-Hansen, 2006, Levy, 2010).

These developments aiming at averting mass influx of irregular migrants to European territory (Peral, 2005, deserve questioning. First of all, are such strategies effective? Even if the surveillance regimes used are highly sophisticated and considered effective by the EUROSUR agency (e.g. drones and radars working non-stop), the ambition to stifle irregular migration by intensified border protection may backfire. Strict border-controls may deter some individuals from seeking access to the Schengen area (persons with valid asylum claims included) but “desperation has no borders”. As long as root problems are improperly addressed, individuals fleeing war, persecution and poverty will try to enter more stable countries – irregularly if need be (Pinyol-Jiménez, 2012). And although large-scale satellite systems patrolling the Mediterranean may detect migrants in distress, thus reducing the number of lives lost at sea, a large number of individuals will still seek to improve their living conditions. An awareness of EU border surveillance strategies will probably make those determined to migrate embark on yet more risky journeys in order to reach Europe without being detected by drones, satellite- and radar systems. They may for instance undertake yet more extensive and dangerous sea journeys on open water (Hernandes-Carretero, 2009) and human traffickers will most likely seek new routes for their (profitable) business (Pacurar, 2003).

More important still, from legal and ethical perspectives, concerted protection strategies and externalized asylum processes raise several problems. Under current EU migration-management a large number of migrants are prevented from having their asylum claims tried properly. EU attempts to avert irregular migration clash with fundamental human rights. On the one hand, immigration is considered a matter of sovereignty. A widespread assumption is that sovereign states should be self-governing and entitled to admit and restrict access to their domains as they see fit (cf. Walzer, 1983, Miller, 2005, Heath Wellman, 2008). On the other hand, emigration is a fundamental human right. It is a universal human right to leave one’s country to seek asylum in another (UN Convention Article 14). All individuals enjoy the freedom to move within-, leave and return to their country (UN Convention Article 13). They are also entitled to fair and effective asylum procedures. However, the right to migrate is an asymmetric (cf. Withol de Wenden, 2000, Cole, 2006, Risse, 2008) - there is no corresponding (claim) right to access and to settle within another country (Risse, 2008). Unless the applicant qualifies as a

refugee, no country *must* grant access to its territory.

Nevertheless, individuals are entitled to a freedom of movement, to have their asylum case tried (due process) and to non-refoulement. No person in need of protection should be returned to a country where her life or freedom may be threatened. Other rights that should be respected are the right of life and physical integrity (Ceriani Cernadas, 2009). Moreover, all individuals, irregular migrants included, enjoy fundamental rights like the right to privacy and personal data (articles 7-8 of the Charter of Fundamental Rights), respect for human dignity and non-discrimination.<sup>3</sup> Importantly, even if irregular migrants violate national legislation, they must not be deprived of their rights and their dignity must be respected. “*Immigrants ... even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals*” (The UN Special Rapporteur on the Rights of Non-Citizens, 2003). States are obliged to protect migrants’ rights both in transit between- and within states.

Not only are EU land- and maritime borders continuously patrolled and monitored. FRONTEX conducts patrols in third country waters as well (Carretero-Fernandez, 2009). Once vessels carrying migrants are detected, these are typically diverted by FRONTEX agents to their (assumed) country of origin. In effect, migrants on board are escorted back and deprived of the individualized asylum procedure to which they are entitled

3 Certainly, poverty is not the only- but a most common reason behind migration.



(Hernandez-Carretero, 2009). Denying asylum seekers access to an asylum process may constitute a breach of the *non-refoulement* principle (Hernandez-Carretero, 2009, Ceriani Cernadas, 2009). It obstructs individuals' chances of *leaving* a country where their fundamental rights and liberties may be grossly disrespected in order to seek asylum elsewhere. Migrants who manage to enter the Schengen region irregularly may be detained until expulsion, thus prevented from seeking asylum. In a vein similar to these "detect and deter-strategies", ambitions to externalize the asylum-seeking process may bar individuals from exercising the right to leave their country of origin to seek asylum – at least in a meaningful sense. Under the Regional Protection Programs drafted, asylum seekers may be required to file their applications in a designated area. They are only permitted to travel into the Schengen region once their protection claims have been recognized as valid. RPAs, imply that asylum seekers may be detained in their region of origin while their asylum application is being processed. A successful application may be a prerequisite for asylum seekers to proceed into the European Union (Noll, 2003. Peral, 2005, Gammeltoft-Hansen, 2006, Levy, 2010). This case is slightly different from the detect-and-divert cases above. Although in the case of Regional Protection Programs, migrants are allowed to *leave* their home countries in order to apply for asylum in countries outside their own, they are not entirely free to decide where to file their application. Rather, they must seek asylum in a designated region. Thus, their freedom of movement is, if not barred, so at least significantly restricted.

Clearly, EU migration-management regimes influence the rights and interests of individual immigrants but they also have a strong impact on other nations. Arguably, they do that to an extent that requires that they, rather than freely protecting their own interests, take on responsibility towards underprivileged others. The case will be made that affluent countries' restrictive immigration policies harm the global poor in two respects. First, they are co-responsible for existing inequalities and poverty. Second, they fail to alleviate poverty. Rather, they serve to reinforce poverty and in consequence, to trigger a migration flow without taking due responsibility therefore. How is this so? The argument draws on Cosmopolitan philosopher Thomas Pogge's reasoning (Pogge, 2008). He asserts that affluent countries have shaped and imposed an institutional order on the globally worst-off - an order that they neither have consented to, nor can opt out from. They are not only poor but "*impoverished and starved under our shared institutional arrangements*" (Pogge, 2004) e.g. multinational corporations and international organizations such as the World Bank and the International Monetary Fund. Thus, affluent societies are responsible for the situation of the poor. And, alternatives under which poverty does not exist can be had (Pogge, 2008) if proper action is taken.

From this perspective, affluent nations making up the European Union can be held responsible both for deprivations that enforce migration and for placing restrictions on underprivileged individuals' chances to migrate.<sup>4</sup> Global warming (traced to the greenhouse gas-emissions from industrialized nations) affects the global poor the hardest and may trigger mass-migration as may food-speculation and "land grabbing" conducted primarily by affluent societies (but also by affluent members of developing countries like Bangladesh). And, EU migration-policies are regimes that dominate the global poor. Admittance rates are beyond influence by those seeking admission. Thus, affluent societies are at least co-responsible for the situation of the worst-off and morally responsible to engage in equitable burden-sharing of migration. Hence, the argument goes, an unrestricted right to immigration restriction based on the principle of sovereignty is little convincing. Arguably, rich nations' global interaction and involvement with poor countries (trade) gives rise to certain moral obligations, restricting their rights to devise immigration policies "as they see fit".

Just like environmental issues, in an interconnected and globalized world, migration is a global concern. These are problems of a dignity that require international rather than regional solutions to be effective. And, from an ethical perspective, these matters require equitable burden-sharing. Thus, in the same way as with

<sup>4</sup> The CBDR principle is one of the main pillars of sustainable development, drawing on equity considerations and explicated in the 1992 Rio Earth Summit.

Global Climate Change, states should be seen as having Common but Differentiated Responsibility (CBDR)<sup>5</sup> with regard to migration. *"In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."*

Certainly, a counter argument may be that a Cosmopolitan-based critique on a nationalist approach like the sovereignty argument is part of, is of little use, since a completely different kind of theory. A more effective way of tackle the problem, it might be said, is to offer an argument from within the nationalist position. Thus, in addition to the Cosmopolitan approach, an argument suggesting equal rights among nation states will be made.

Rich countries typically have the strictest border controls but are not most exposed to immigration. The largest part of the migration flow goes *between* developing countries rather than from developing to developed countries. It should also be recognized that the worst-off individuals rarely ever migrate – at least not to the developed world. Migrants who manage to reach developed countries despite excessive border-controls are always *relatively* resourceful and large numbers of skilled people leave developing countries for better conditions in the developed world (Intellectual Capital Flight). This means that the largest migration-burden is carried by underprivileged nations and that the global poor (in absolute terms) remain rather than migrate. Whereas the countries least affected by the most vulnerable of immigrants are highly successful in protecting their borders, developing countries that receive large numbers of poor immigrants are often unable to protect their borders even if they would like to. As demonstrated above, affluent EU member states have sophisticated surveillance-regimes in place to control and restrict immigrants' access. In these countries, personal IDs make up the basis for membership (Torpey, 2000) and surveillance technology is used to verify immigrants' identity and to differentiate between those with- and without legitimate access (Lyon, 2003). Developing countries with a low level of institutionalization typically lack standardized documents like ID cards and passports, administrative systems (e.g. records of birth, marriage and death) and the technology necessary to conduct such control (Kassim, 1998, Sadiq, 2005) – preventing effective border/immigration control. Affluent countries' strict control of- and restrictive access to their territories, bar the relatively well-off migrants from entry. Certainly, the case can be made that rich nations' strict border regimes can help poor countries keep their highly educated citizens. However, current immigration policies do not benefit developing countries in that way since affluent countries welcome skilled immigration. Hence, the problem of Intellectual Capital Flight is not averted.

Thus, the argument is that although nation states' may be entitled to act autonomously with regard to border control, this right is conditioned on and restricted by other states' corresponding rights. This means that one state cannot be morally justified to act in ways so that another state is prevented from exercising the same right. By reinforcing the border control of their territories, affluent states worsen the situation and chances of poor nation states. Either privileged nations should help poor compatriots by relaxing their border protection and take on burden-sharing by admittance or they should assist them in protecting their borders equally well. If the latter path would be pursued, migrants would be severely restricted from leaving and entering any country. Although a grotesque scenario, it would at least be a fair application of the sovereignty principle.

<sup>5</sup> This implies that immigrants often can live in countries with low levels of institutionalization sans papiers yet under citizen-like conditions such as in Malaysia (Sadiq, 2005) where a large number of irregular migrants from Indonesia and Philippines utilize social, economical and even political rights (Kassim, 1998, Sadiq, 2005). This is possible since Malay citizens do not necessarily have birth certificate or national ID why such documents seldom are asked for in society. In that way, the border between citizen and alien become fuzzy (Sadiq, 2005).

To sum up, irrespective of position for- or against open borders, the philosophical migration-debate has revolved on European and North American conditions and interests, focusing welfare-states' rights and duties *vis-à-vis* universal rights becoming migrants e.g. freedom of movement. With few exceptions e.g. the problem of intellectual capital-right, attention has not been paid to developing countries' rights and interests regarding migration. In order to repair such deficits, it has been shown that the largest share of the "migration-burden" is carried by developing countries. It has also been argued that migration, just like environmental change, is a global concern. And, the case has been made that developed countries' are (at least) co-responsible for world poverty, and consequently for migration that is intimately connected with poor (and unequal) living standards. Affluent nations' rights to self-determination regarding immigration matters are morally restricted by rights of non-affluent societies. Two different arguments are offered in support of that claim: one Cosmopolitan-based argument and one nationalist argument. Both speak to equitable burden-sharing on migration - in some form.

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